

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
KINOJUZ, I.P., :
:
Plaintiff, : 11-CV-299 (DLI) (VVP)
:
February 1, 2012
:
V. : Brooklyn, New York
:
IRP INTERNATIONAL, INC., :
et al., :
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: GEORGE LAMBERT, ESQ.
PETER JOSEPH, ESQ.

For the Defendant: OULIAN DOUBININE, PRO SE
IGOR ERLIKH, PRO SE

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1 THE CLERK: Civil cause for oral argument, 11-CV-
2 299, Kinojuz, I.P. v. IRP International, Inc., et al., the
3 Honorable Viktor Pohorelsky presiding.

4 Counsel and pro se defendants, please state your
5 appearances for the record.

6 MR. LAMBERT: George Lambert for Kinojuz, the
7 plaintiff, acting pro hoc vice of this case, under the
8 supervision of my senior colleague, Peter Joseph.

9 MR. JOSEPH: Peter Joseph for the plaintiff, also.

10 MR. ERLIKH: Igor Erlikh, defendant.

11 MR. DOUBININE: Oulian Doubinine, defendant.

12 THE COURT: All right. We have a number of
13 motions pending that I have now had a chance to consider. I
14 don't believe that I need much in the way of additional
15 argument but I will let you know as we proceed, if I do.

16 The principal motion or I guess the motion that I
17 have to address first is the plaintiff's motion for a
18 default against the corporation. As I have told the
19 defendants in the past, the corporate defendant can only
20 appear in court represented by counsel. Counsel has not
21 appeared on behalf of IRP at any point, as far as I recall,
22 and I don't believe there's counsel here. I don't see
23 anyone here and I gather, Mr. Erlikh, you or Mr. Doubinine
24 were unable to retain counsel for IRP; is that correct?

25 MR. ERLIKH: Yes.

1 THE COURT: All right. Well, in the absence of
2 counsel, a default must be entered by IRP. I'm going to
3 direct the clerk of the Court to enter a default, which will
4 then subject IRP International, Inc. to a default judgment.
5 That brings me to the next motion, which the motion -- the
6 defendants' motion to dismiss. I'm talking now about the
7 individual defendants, Mr. Erlikh and Mr. Doubinine, their
8 motion to dismiss or to compel arbitration.

9 The motion to dismiss is premised in part on an
10 assertion that the contract that is the subject of at least
11 one of the claims in the complaint was not in fact signed by
12 Mr. Doubinine, that his signature on the contract is forged.
13 That creates a factual dispute. That's an issue of fact and
14 cannot be decided at this stage of the proceedings. That
15 can only be decided after discovery, either at a trial or on
16 a motion for summary judgment. But as an initial motion to
17 dismiss the complaint, based on the pleadings, which is
18 essentially what this motion is, the Court is unable to
19 grant a motion to dismiss the complaint.

20 In any event, that will only affect the claims
21 based on the contract between Kinojuz and IRP International,
22 Inc., and there are a number of other claims in the
23 complaint that are not based on the contract. There are
24 other forms of obtaining relief to achieve the remedy that
25 the plaintiff is seeking, but they are not based on the

1 contract.

2 The other basis for the motion was to compel
3 arbitration, in the event that the contract did exist. That
4 is, assuming that the Court were to determine that the
5 contract upon which the plaintiffs are suing was a valid
6 contract between IRP and Kinojuz, the disputes arising from
7 that contractual relationship would have to be arbitrated,
8 because there is a clause in that contract that says that
9 disputes arising out of the contract or related to the
10 contract would be arbitrated.

11 The problem with that argument is that the
12 contract is between IRP and Kinojuz. There is no agreement
13 between the plaintiff and the individual defendants to
14 arbitrate anything. At least there's nothing in the record
15 to indicate that there is. So there's no basis for
16 compelling arbitration with respect to the disputes between
17 the plaintiff and the individual defendants.

18 To put a finer point on this, the defendants
19 themselves are not signers of the contract, as far as I read
20 the record. The defendants themselves therefore cannot be
21 sued under the contract. There may be other bases for suing
22 the individual defendants, Mr. Erlikh and Mr. Doubinine, but
23 the contract furnishes no basis for it because they didn't
24 sign the contract. They may have signed the contract but to
25 the extent that Mr. Doubinine is alleged to have signed the

1 contract, he signed the contract on behalf of IRP and not
2 individually.

3 So the agreement is not, based on the record
4 before the Court, between Kinojuz and Mr. Doubinine, it is
5 between -- notwithstanding that he signed the contract, it
6 is between Kinojuz and IRP. So there is -- the individual
7 defendants who are here can't be sued under that contract
8 but by the same token, they cannot rely on any of the
9 provisions in that contract as a basis to compel arbitration
10 between the parties. So there's no basis to grant the
11 motion to dismiss.

12 So it's my recommendation to Judge Irizarry, to
13 whom I think this case is assigned, that the motion to
14 dismiss be denied for the reasons stated on the record.
15 We'll prepare a transcript of these rulings, by the way, and
16 the parties will get a copy of the transcript. You will
17 have the right to file objections with Judge Irizarry within
18 fourteen days after you receive a copy of the transcript, if
19 you wish to object to the rulings that are made by the Court
20 today.

21 Let me try to explain this to Mr. Erlikh and Mr.
22 Doubinine. There are two judges assigned to this case,
23 Judge Irizarry and myself. Judge Irizarry has overall
24 authority in the case. I have authority to decide matters
25 that don't dispose of the case. I don't have authority as a

1 final matter to decide motions to dismiss, but I have the
2 authority to make a recommendation to her about such
3 motions, and that is what I am doing now. I'm making a
4 recommendation to her that the motion to dismiss made by the
5 defendants be denied for the reasons that I've stated.

6 But that's not a final decision on the motion;
7 Judge Irizarry still has to make a final decision based on
8 my recommendation. And to the extent that the parties
9 disagree with what I recommend, they are free to make
10 objections to my recommendation. They need to do so in
11 writing, within fourteen days after I -- after you receive a
12 copy of the transcript of today's proceeding, in which these
13 recommendations are made.

14 If you don't make a written objection to the
15 recommendations -- a written objection does have to state
16 with specificity what you are objecting to and why. But if
17 you do not make written objections -- and this goes for all
18 parties. If written objections are not filed within
19 fourteen days after receiving the transcript, then you can
20 be found to have given up any right to appeal any of the
21 recommendations and any final order entered by Judge
22 Irizarry based on my recommendations. That's the effect of
23 the decision I'm just making with respect to the motions to
24 dismiss. I'm denying the motion -- it's my recommendation
25 that the motion to dismiss be denied and it's up to Judge

1 Irizarry to make a final order with respect to that.

2 It is also my recommendation that IRP
3 International be found in default because they are not
4 represented by counsel and in the absence of counsel, they
5 are in default.

6 Now, there are -- the plaintiff made a motion to
7 amend. As I read the motion, it was a motion that would
8 essentially drop the contract claim and therefore avoid the
9 need to go to arbitration. If this case -- if IRP still was
10 in the case and hadn't defaulted, then there would be -- the
11 motion to amend would probably have to be denied, at least
12 to the extent that it tried to eliminate the contract claim.
13 But I don't have to reach that issue in light of the fact
14 that IRP International is no longer in a position to contest
15 the case. Therefore, I don't know that there's any reason
16 to grant the motion to amend or for a motion to amend to
17 proceed.

18 I'll ask the plaintiff if I'm misunderstanding
19 what you intended to do. You wanted to add some factual
20 allegations, as I understand it, but you don't need to add
21 factual allegations in order to be able to prove facts if
22 there's a trial. The only other -- the way I understood it,
23 the only other change was that you would drop the contract
24 claim. Am I missing something?

25 MR. LAMBERT: Your Honor, you seized the essence

1 of the proposed amendment. Let me just add this: That
2 before we moved to amend, we received the banking documents
3 from J.P. Morgan Bank. Before that, we didn't have that
4 information. That evidence was highly relevant to this case
5 because it showed that defendants didn't have any intention
6 to comply with the alleged contract, that immediately upon
7 receipt of the funds, they started to dispense with the
8 funds.

9 THE COURT: Let me interrupt you.

10 MR. LAMBERT: Yes.

11 THE COURT: You don't have to put in your pleading
12 all the evidence that you have in support of your case. You
13 are -- the only -- the pleading simply has to state the
14 claims that you're making and a sufficient factual basis for
15 making the claims. And if you have a sufficient factual
16 basis in the unamended complaint, in the initial complaint,
17 then you don't have to make an amended complaint, you don't
18 have to file an amended complaint to add additional evidence
19 because if that was required, we would be constantly
20 amending complaints as discovery proceeded.

21 If the only purpose was to add the additional
22 evidence that you already obtained, I don't know why there's
23 a need to make an amended complaint. I mean, if that's the
24 only purpose of amending the complaint --

25 MR. LAMBERT: Understood, your Honor.

1 THE COURT: -- and to drop the contract claim --

2 MR. LAMBERT: Understood, your Honor. Obviously,
3 whatever you -- your direction will be -- the most efficient
4 way to get us to trial would be the best for the plaintiffs
5 and hopefully, defendants also understand that. The case is
6 simple enough. Defendants received \$200,000. They
7 apparently spent it within one month plus a couple of weeks.
8 If your Honor considers that it would be unnecessary to
9 amend, then definitely, the plaintiffs -- if that brings us
10 closer to the trial, the plaintiffs would be grateful if
11 that lifts one of the obstacles on the way to the trial.

12 THE COURT: Well, that's -- it's your choice to
13 make, whether you want to proceed with the motion to amend
14 or not. If you do, understand that the amended complaint
15 will only be valid against the individual defendants here,
16 because IRP is as if they're not here. I don't know what --
17 in any event, why you -- well, it's up to you how you want
18 to proceed. You have to make the choice. I can't make it
19 for you.

20 But if you withdraw the motion to amend, you will
21 obviously then proceed on the basis of the complaint that's
22 now in the case, complete discovery, and then move to
23 whatever the next phase of the case is. The choice is up to
24 you as to whether to move to amend or not. Whether to
25 withdraw your motion to amend, that's up to you.

1 MR. LAMBERT: Whatever your guidance would be.

2 THE COURT: I can't give you guidance. That's the
3 point I'm trying to make.

4 MR. LAMBERT: Okay.

5 THE COURT: I'm not giving anyone guidance. I'm
6 telling you what the options are. You have to make the
7 decision. I tried to advise you of where -- what I'm trying
8 to do is, I am trying to avoid unnecessary work for
9 everybody. And if the motion to amend was made simply for
10 the purpose of adding allegations of additional evidence and
11 simply for the purpose of dropping the claim, neither of
12 those, it seems to me, need to be done.

13 You don't need -- you don't have to put all your
14 evidence in your complaint and dropping a breach of contract
15 claim -- well, if you want to drop it, you can, because you
16 have no claim against these two individuals for breach of
17 contract. You do have a claim against IRP for breach of
18 contract, on which you may still wish to get a default
19 judgment. That's up to you. But right now, I need to know
20 whether you want to proceed with your motion to amend or
21 not, or if you want to take a few days to think about it and
22 let me know in three or four days, we can do that, too, and
23 consider how you want to proceed.

24 Right now, we don't have -- if you file a motion
25 to amend and if the motion to amend is granted -- it may be,

1 I'm not saying it won't. If it is, then they're going to
2 have additional time to answer and we're going to have to
3 wait to get the case moving, although we do have a motion to
4 compel some discovery so far. But until the motion to amend
5 is decided, I'm not going to -- I'll decide the motion to
6 compel that's now before me but I'm not going to -- we'll
7 have to wait until we have all the claims before we proceed
8 with other discovery.

9 MR. LAMBERT: I had a word with co-counsel and we
10 submit to your Honor that we are withdrawing the motion to
11 amend without prejudice.

12 THE COURT: You're ready to proceed on the initial
13 complaint.

14 MR. LAMBERT: Yes.

15 THE COURT: Okay.

16 MR. LAMBERT: Without prejudice.

17 THE COURT: Well, there's nothing that's done --
18 there's no ruling on the motion. So if you withdraw the
19 motion, it's not -- there's no prejudice to making the
20 motion to amend in the future, if you wish.

21 Let me finally turn to the motion to compel.
22 First, with respect to Mr. Doubinine, Mr. Doubinine did
23 answer the request, as I understand it. He made the
24 assertion that it was beyond his power to do certain things
25 or the documents were not within his possession, not within

1 his control. At this point, I have no basis to find
2 otherwise. I don't have anything -- I don't have any
3 evidence that he actually has them in his control, so I
4 can't compel Mr. Doubinine to produce documents that he says
5 he doesn't have.

6 To the extent that -- you can certainly pursue
7 with Mr. Doubinine, in depositions if you wish to do that,
8 what if any documents he ever had, where they might be and
9 that sort of thing. At this point, I have no basis to deny
10 or to compel Mr. Doubinine to produce documents that he says
11 he doesn't have. I don't have any proof that he does have
12 them.

13 Now, I think that there was an argument that he
14 had control over a bank account, but it was my understanding
15 you already have the documents from the bank account, so
16 that an order that he provide you -- I don't know if there's
17 anything -- I mean, you've already gotten the documents, I
18 guess is what I'm saying, so that I don't know if there's
19 any point in compelling anything further to be done.

20 MR. LAMBERT: The documents produced by the bank
21 show that there were a couple of other accounts where the
22 money was actually transferred. We don't know what happened
23 to that money, to those portions of the money which went to
24 sister accounts under the control of Mr. Erlikh.

25 THE COURT: Do you know if they are -- you know

1 they are Mr. Erlikh's accounts?

2 MR. LAMBERT: It shows on the subpoenaed documents
3 that they are. Those are related accounts. That's the
4 bank's designation of related account.

5 THE COURT: Okay. I don't know exactly what that
6 means but -- these are Mr. Erlikh's accounts as opposed to
7 Mr. Doubinine's accounts, in any event.

8 MR. LAMBERT: My take is, that's Mr. Erlikh's
9 personal account where he put that money.

10 THE COURT: Okay. So let me turn to -- just as a
11 final ruling, I'm denying the motion to compel with respect
12 to Mr. Doubinine, as I don't have a basis, as a factual
13 matter, to compel him to produce anything that is shown to
14 be in his custody or control, other than perhaps the bank
15 statements, but you already have that. So I don't know if
16 there's any point in my -- there's nothing that -- what I'm
17 saying is, I suppose I could have him sign a release that
18 says that the bank could turn it over to you, but it's
19 already turned it over to you.

20 MR. LAMBERT: Just two questions to Mr. Erlikh.

21 THE COURT: Not Mr. Erlikh. I'm going to deal
22 with Mr. Erlikh in a moment.

23 MR. LAMBERT: Yes. I apologize.

24 THE COURT: Right now, talk to me and I'll --

25 MR. LAMBERT: Yes.

1 THE COURT: -- put the questions to Mr. Doubinine.

2 MR. LAMBERT: Yes. The issues regarding his
3 receiving the money. There was one check --

4 THE COURT: Mr. Doubinine receiving the money?

5 MR. LAMBERT: Mr. Doubinine received a check for
6 \$15,000. We want to know where that money went.

7 THE COURT: Well, you can certainly have a
8 deposition of him. You can serve interrogatories on him, to
9 ask him those questions. That's for later discovery.
10 You're certainly free to pursue anything that you've learned
11 already.

12 MR. LAMBERT: Okay.

13 THE COURT: Okay. Let me turn to Mr. Erlikh. Mr.
14 Erlikh did not provide responses, on the grounds that he was
15 waiting on an attorney. There's not going to be an
16 attorney, so it's time to provide responses to the document
17 requests that were served on you.

18 MR. ERLIKH: What kind of documents, your Honor?

19 THE COURT: I'm sorry?

20 MR. ERLIKH: What kind of documents you're talking
21 about?

22 THE COURT: He gave you -- he served a list of
23 document requests. I had copies of them and there are
24 copies in the papers that were filed in court.

25 MR. ERLIKH: I think we give them answers. I

1 think you have -- I mean, all answers which were --

2 THE COURT: I don't recall seeing any answers.

3 Did you get answers to --

4 MR. ERLIKH: I mean, including the bank records,
5 whatever he already received.

6 THE COURT: No. You have to give a written
7 response to the document requests. You have to say in
8 writing, item by item, whether you possess documents, and if
9 so, whether you're going to produce them. I did not -- as a
10 matter of fact, I saw your response. Your response to the
11 document requests -- actually, it's a response to the
12 motion. I think you may not have given any written
13 responses to the document requests at all.

14 MR. ERLIKH: Definitely, we have responded to the
15 motion.

16 THE COURT: Your response to the motion does have
17 an Exhibit A, and there are some documents which are -- I
18 don't really understand what they are because they're mostly
19 in foreign languages.

20 MR. ERLIKH: All of them translate, your Honor.

21 THE COURT: In any event, your response to the
22 motion for the production of discovery was essentially an
23 argument that -- you opposed the motion and then you said
24 that until you had appointment of counsel, it would not
25 serve the interests of justice to require you to gather and

1 submit discovery material or to proceed in the civil action
2 in any other capacity, I guess. So you have to now respond
3 in writing and produce the documents requested, unless you
4 think there's a basis to object to producing the documents
5 in question that they've asked for.

6 Did you serve only document requests? You didn't
7 serve interrogatories, right? It's just document requests.

8 MR. LAMBERT: Just document requests.

9 THE COURT: So you have to basically, as Mr.
10 Doubinine did -- I don't know if you saw Mr. Doubinine's
11 response but he went one by one and he said, I don't have
12 these documents, they're not in my control, or he said, I
13 have some documents and here they are. That's what you have
14 to do and you have to do that within thirty days, in
15 writing, send it over to the defendants, okay? I mean to
16 the plaintiff. Do you understand what I'm saying?

17 MR. ERLIKH: Yes, your Honor, I really -- I truly
18 understand what you say. I don't remember exactly what kind
19 of answer on the documents, but definitely something was
20 answered because briefly, which I'm reading now, here, some
21 questions which is not applicable to me.

22 THE COURT: If you can show me, Mr. Erlikh -- if
23 you can show me that you have given a written response to
24 them, then I'll take a look at the response. But if you
25 haven't, and I haven't seen it --

1 MR. ERLIKH: No, your Honor, okay, you're right,
2 maybe not. But everything which we send to them, we submit
3 to the Court.

4 THE COURT: I don't want to get it.

5 MR. ERLIKH: Okay.

6 THE COURT: I don't want to get it, they need to
7 get it. As a matter of fact, it's important that everybody
8 understand that you're not to file the discovery materials
9 with the Court. Don't file -- to the extent that you have
10 documents in your possession that are called for by their
11 requests, don't give those to the Court, give them only to
12 the other side.

13 MR. ERLIKH: Okay.

14 THE COURT: They are not to be filed, because we
15 have too much paper as it is. It's only if -- if it turns
16 out that there's a dispute about something, maybe I'll look
17 at some of the documents, and I'll make a decision about
18 whether any of them have to be filed, but don't file papers
19 with the Court.

20 And your written responses to his document
21 requests, don't file those with the Court, either. Just
22 send your written responses to Mr. Joseph or Mr. Lambert,
23 either one of them, by thirty days from today.

24 MR. ERLIKH: I'm sorry, I can take this?

25 MR. LAMBERT: Yes, that's a duplicate.

1 MR. ERLIKH: Thank you.

2 THE COURT: Okay. Now --

3 MR. ERLIKH: When you give me a chance, your
4 Honor, I would like to say something.

5 THE COURT: Okay.

6 MR. ERLIKH: After you finish whatever is --

7 THE COURT: Okay, I'll give you a chance in just a
8 moment.

9 MR. ERLIKH: Thank you.

10 THE COURT: Let me find out -- I think that
11 disposes of all the motions that are pending before me. Oh,
12 there was a motion for leave to file a transcript by the
13 plaintiff. You don't need to file it. You don't need to
14 make such a motion. I think the transcript, as a matter of
15 fact, has already been docketed. You don't need to make
16 such a motion.

17 If you have a -- if you've asked for a transcript,
18 then typically, it's going to be filed automatically,
19 although for a period of time, it's not available to people
20 who haven't paid for it. That's typically the way it
21 operates. But if you've ordered a transcript, it typically
22 is filed under seal, available only to those who have paid
23 for it, okay? So the motion is going to be terminated
24 because it's no longer necessary.

25 Do you -- I'm talking to the plaintiffs now. Do

1 you intend to take depositions or to file any other -- or to
2 submit any other discovery requests to the defendants?

3 MR. LAMBERT: Yes, your Honor, that would be very
4 beneficial to us. We have questions about what the
5 defendants did with the money.

6 THE COURT: So which do you intend to do,
7 depositions?

8 MR. LAMBERT: Depositions.

9 THE COURT: Okay, I will explain to the defendants
10 what that is.

11 The plaintiff is entitled to conduct interviews --
12 it's like testimony in court, essentially, except there's no
13 judge present. But there is a court reporter present, who
14 records both the questions that are asked and the answers
15 that are given by the witness, and it's called a deposition.
16 They have the right to conduct a deposition of each of you.
17 You can attend each other's deposition. Depositions
18 ordinarily will take place in -- you can attend but you're
19 not entitled to interfere or interrupt, but you're entitled
20 to appear.

21 In fact, you're entitled, once the plaintiffs have
22 finished -- the plaintiff has finished asking questions of a
23 witness, you're entitled to ask questions of the same
24 witness. You don't have to but you can.

25 MR. ERLIKH: I mean, the same witness of the

1 plaintiff's side.

2 THE COURT: I call it a witness. For instance,
3 the plaintiff may -- and they say they will want to take a
4 deposition of each of you. So each of you will be a witness
5 at your deposition. At the deposition of Mr. Erlikh --
6 let's hypothetically assume that you're at the deposition of
7 Mr. Erlikh. Mr. Doubinine can attend that deposition and
8 once the plaintiff has completed its questioning of Mr.
9 Erlikh, Mr. Doubinine could ask questions, too. He doesn't
10 have to and in fact, defendants often do not ask question of
11 each other, but he has that right if he wants to, and vice
12 versa. That is, at Mr. Doubinine's deposition, if you want
13 to ask questions of him, you may do so as well.

14 The deposition has to be -- the witness is
15 testifying under oath, just as if he was in court, and so is
16 subject to the penalty of perjury if he lies. They will
17 seek to conduct such a deposition. They have the right to
18 do that. They can pick the location, as long as it's not
19 terribly inconvenient to you. They can pick the location.
20 It can be in Mr. Lambert's office or -- not Mr. Lambert's,
21 Mr. Joseph's office. They can't require you to go to
22 Washington, which is I think where Mr. Lambert has his
23 office. You don't have to go there. But if it's somewhere
24 in the New York City area and it's reasonably convenient,
25 you have to go to where they ask you to go and appear at the

1 time that they ask you to appear.

2 Often in these situations, there's an agreement;
3 can you make it, what's convenient? So you should discuss
4 that, so you can do it in a fashion that's not -- that
5 doesn't make it more difficult than it has to be, okay?

6 MR. ERLIKH: Your Honor, can we have the
7 deposition, also?

8 THE COURT: You can take the deposition of the
9 plaintiff as well.

10 MR. ERLIKH: Yes.

11 THE COURT: But you have to --

12 MR. ERLIKH: I would like to arrange that at the
13 same time, if it's possible.

14 THE COURT: That's not always possible but --

15 MR. ERLIKH: Or be close to the moment of
16 deposition that we can have deposition with Mr. Joseph.

17 THE COURT: You can but --

18 MR. ERLIKH: So at least to be in one week, two
19 week together. Not together, I mean we finish our
20 deposition, we would like to start deposition of him.

21 THE COURT: All right.

22 MR. ERLIKH: In United States, of course.

23 THE COURT: You are entitled to have a deposition
24 of the plaintiff. It's a little trickier when the plaintiff
25 is a corporation but you can -- I'm going to ask you to talk

1 to the pro se clerks downstairs, the pro se clerks --

2 MR. ERLIKH: Okay.

3 THE COURT: -- about how you can go about
4 arranging that deposition, because for a corporation like
5 Kinojuz -- I think Kinojuz is a corporation, is that right?
6 It's not an individual, it's a person -- I mean, it's a
7 company, it's an entity.

8 MR. LAMBERT: It would be a rough equivalent of
9 LLC here.

10 THE COURT: Okay. So you have to identify in
11 writing what subjects you want the company to provide a
12 witness from the company to testify about. You have to
13 identify the subjects.

14 MR. ERLIKH: Understanding it's company, it's one
15 man.

16 THE COURT: Well, if it's the owner of the
17 company --

18 MR. ERLIKH: It's him and his company.

19 THE COURT: Let me finish, please. If it's the
20 owner or the chief executive officer, you can require him to
21 appear on behalf of the corporation. You can require a high
22 officer, the owner -- you can require them to appear and
23 testify on behalf of the corporation.

24 MR. ERLIKH: Excuse me, your Honor. How I have to
25 submit that, letter motion or what?

1 THE COURT: That's why I'm telling you -- it's not
2 a motion to me.

3 MR. ERLIKH: Okay.

4 THE COURT: You have to -- let me ask the
5 plaintiff, do you have a person in mind? Do you have
6 somebody in mind that you want to depose?

7 MR. ERLIKH: No, just Mr. Zhurabek, of course.

8 THE COURT: I don't know who that is.

9 MR. ERLIKH: President or chairman, whatever it
10 is, of Kinojuz, owner or how --

11 THE COURT: You don't know what his name is.

12 MR. ERLIKH: Mr. Zhurabek Musabayev. I know him
13 personally.

14 THE COURT: Musabayev, Mr. Musabayev.

15 MR. ERLIKH: Yeah, Musabayev, yes, of course.

16 THE COURT: Okay. So Mr. Musabayev. Does he
17 reside in the United States?

18 MR. LAMBERT: He is in Kazakhstan but the last
19 time we discussed, he would be coming to the United States,
20 to New York, to be deposed.

21 THE COURT: Okay. So sometime when he's traveling
22 in the United States -- is that sometime in the next several
23 months?

24 MR. LAMBERT: Yes, your Honor.

25 THE COURT: Okay, good. So the next time he's in

1 the United States, you should conduct the depositions of
2 everybody.

3 MR. ERLIKH: Yes, that's what I would like.

4 THE COURT: They don't all have to be on the same
5 date. You do have to pay for a court reporter to appear.

6 MR. ERLIKH: Well, if we have to pay, we will pay.

7 THE COURT: Okay, so you -- and the pro se clerks
8 can help you in that process, you know, finding a court
9 reporting service. And if you don't have a place to conduct
10 the deposition, you can conduct it here in the courthouse.
11 Again, let the pro se clerks know. Talk to them.

12 MR. ERLIKH: Yes, I will.

13 THE COURT: You've talked to them before, have you
14 not?

15 MR. ERLIKH: Well, when I submitted the motions,
16 but I never asked that question. I will address this right
17 now, as soon as we finish.

18 THE COURT: The pro se clerks are there to assist
19 you in dealing with procedural matters, so you should feel
20 free to ask them about how to arrange for the deposition.
21 You should be in touch with Mr. Joseph or Mr. Lambert and
22 coordinate the dates and talk to the pro se office about how
23 to arrange for a court reporter to appear where you need
24 that person to appear on the dates in question, and they can
25 help you.

1 MR. ERLIKH: Very good, your Honor. After we
2 finish, we will exchange the telephone -- I think we have
3 telephone for Mr. Joseph. And we will organize this
4 wherever it's convenient for both of us.

5 THE COURT: There was something else that you
6 wanted to say.

7 MR. ERLIKH: Yes, your Honor. I would like address
8 from the beginning but you already --

9 THE COURT: I'm sorry?

10 MR. ERLIKH: I said, I would like to addressing
11 (sic) from the beginning but when you already denied our
12 motion to compel to arbitration or to dismiss, then I don't
13 know what you say. But I still would like to address it,
14 your Honor, because we was charged -- I have complaint for
15 breach of contract. On your table, you have two contracts.
16 One is a forged contract, second is original contract.

17 THE COURT: I'm not sure I'm following what you
18 say. Second is an original?

19 MR. ERLIKH: It's two contracts. One is original,
20 which was signed by Mr. Doubinine, and one contract in which
21 we have a complaint, all right, which was complaint against
22 us, which we say this signature is forged.

23 THE COURT: Okay, let me just stop for a moment.
24 Stop for a moment. You're saying there was another document
25 that is a contract.

1 MR. ERLIKH: Of course. We submit, your Honor.

2 THE COURT: Okay. There was some suggestion of
3 that in your argument on the motion. But that contract was
4 signed -- was between IRP and Kinojuz, right?

5 MR. ERLIKH: Right.

6 THE COURT: Okay.

7 MR. ERLIKH: By Mr. Doubinine and Mr. Musabayev,
8 on behalf.

9 THE COURT: I understand. But, again, IRP is in
10 default because IRP doesn't have an attorney.

11 MR. ERLIKH: Okay.

12 THE COURT: So you cannot assert IRP's rights.
13 That contract is basically irrelevant to the remaining part
14 of this dispute, because the contract was between IRP and
15 Kinojuz. That's why I tried to explain at the outset and
16 it's in the transcript, and you'll get a chance -- you'll
17 read the transcript once it's prepared. But the bottom line
18 is this: They cannot sue you for the obligations in the
19 contract. In other words, the contract -- they don't have a
20 right to have you --

21 MR. ERLIKH: I understand, your Honor.

22 THE COURT: This is a little complicated because
23 it's not -- one of their claims is that ultimately, you and
24 Mr. Doubinine may be liable for the obligations of IRP, but
25 it's not because of the contract -- because of a contract

1 between you and Kinojuz. That's sort of a separate and
2 complicated issue.

3 The only -- the only one who can assert rights
4 under the contract is IRP. You cannot, because you are not
5 IRP. IRP is somebody separate, and you cannot assert IRP's
6 rights. Mr. Doubinine cannot assert IRP's rights. So the
7 contract that you may have, that you say you have is a
8 contract between IRP and Kinojuz, not between you and
9 Kinojuz. Do you follow me so far?

10 MR. ERLIKH: I follow you 100%, your Honor.

11 THE COURT: Okay, now --

12 MR. ERLIKH: But --

13 THE COURT: -- because that's the case, nothing
14 about what's in that contract will be part of the rest of
15 this case. In other words, the terms and provisions of that
16 contract don't affect -- I guess I'm overstating this
17 because --

18 MR. ERLIKH: Your Honor, I really understand
19 clearly what you say, but there was a complaint. That's why
20 we sitting in this courtroom.

21 THE COURT: No, that's not the only reason. It's
22 not the only reason.

23 MR. ERLIKH: Mr. Lambert said it's very simple.
24 The money was sent but first of all, it was complaint from
25 that side -- I mean it's not from -- I mean Mr. Lambert.

1 I'm talking about from the plaintiff's side.

2 THE COURT: I understand.

3 MR. ERLIKH: Money was sent against the contract
4 to produce the movie.

5 THE COURT: Okay.

6 MR. ERLIKH: They said is breach of contract. We
7 have enough proof we didn't breach the contract.

8 THE COURT: Right now, the way things stand right
9 now, the claims in this complaint are not under the
10 contract. They're for other things.

11 MR. ERLIKH: Okay.

12 THE COURT: They're related -- they're related to
13 the fact that money was sent to you or they claim money was
14 sent to you, and they claim the money was sent to you
15 because of the contract, but the contract and the terms of
16 the contract are not the basis on which they are seeking to
17 obtain the money back from you. They're saying there are
18 other claims that can be made.

19 MR. ERLIKH: So what kind of claim is this they
20 make?

21 THE COURT: They're in the complaint.

22 MR. ERLIKH: Okay.

23 THE COURT: There are claims for conversion, for
24 money had and received, for fraud, for misrepresentations.

25 MR. ERLIKH: Wonderful.

1 THE COURT: Breach of fiduciary duties. I don't
2 know if any of them will be successful but those are all
3 claims that are separate from the contract.

4 MR. ERLIKH: Well, you're right, your Honor, I'm
5 not a lawyer.

6 THE COURT: You need a lawyer because I can't
7 spend my whole day trying to educate you.

8 MR. ERLIKH: No, no, you don't have to spend your
9 time. But one year exactly -- I mean now. We tried defend
10 and tried bring the proof, which the plaintiff's side --
11 it's made certain time of forgery. Now, we are talking
12 completely different because the IRP are in default, then we
13 cannot go with the contract, which is base of the money
14 which arrive, and it's black and white. They showed the
15 proof of our full innocence. Now, now --

16 THE COURT: All of this right now --

17 MR. ERLIKH: I mean from now, we have to defend
18 something else.

19 THE COURT: Okay, you're right, you have to defend
20 something a little bit different than what it was.

21 MR. ERLIKH: Okay, we will. We also still have
22 enough proof, your Honor, for something different.

23 THE COURT: Okay.

24 MR. ERLIKH: I would like your permission because,
25 you know, now, everything which was done before -- so we

1 have to put in the garbage. Even affidavit from Mr.
2 Musabayev lying over here -- I mean, I just mark it here.
3 So now, all this evidence --

4 THE COURT: I don't know.

5 MR. ERLIKH: -- means nothing anymore.

6 THE COURT: No, I'm not saying that. I don't know
7 that. I don't know what evidence will be relevant at a
8 trial or not. I'm not making that decision now.

9 MR. ERLIKH: I'm glad to go to the trial, believe
10 me.

11 THE COURT: Okay.

12 MR. ERLIKH: We are ready.

13 THE COURT: Okay, well --

14 MR. ERLIKH: We are ready.

15 THE COURT: Mr. Erlikh, please. Before you get to
16 a trial, we're going to have these depositions.

17 MR. ERLIKH: Okay.

18 THE COURT: I'm going to ask you to complete these
19 depositions --

20 MR. ERLIKH: Wonderful.

21 THE COURT: -- by -- is there any reason they
22 can't be done by the end of March?

23 MR. LAMBERT: No reason that I know of.

24 THE COURT: When is Mr. Musabayev coming? Is it
25 going to be in February?

1 MR. LAMBERT: I'll pass to him report tonight and
2 I'll get to know when he's available.

3 THE COURT: Because Mr. Erlikh has -- I gave him
4 thirty days to respond to the document requests. I think I
5 need to shorten that time. If you want to hurry up and get
6 this resolved, let me give you 21 days to respond to those
7 requests, okay?

8 MR. ERLIKH: I don't know which to respond but I
9 will try do my best.

10 THE COURT: You have to respond in writing,
11 saying --

12 MR. ERLIKH: Your Honor --

13 THE COURT: Let me finish.

14 MR. ERLIKH: Okay.

15 THE COURT: Mr. Erlikh, I'm trying to explain this
16 to you, so listen to me. You have to respond in writing,
17 one by one. There's document request number one.

18 I think they're numbered, are they not, Mr.
19 Lambert? Are they numbered?

20 MR. LAMBERT: They are numbered, yes.

21 THE COURT: So document request number one, you
22 put a heading, document request number one and underneath
23 that, you say, I will produce all the documents that you've
24 asked for, or you can say, I have no documents of these type
25 that you've asked for, or you can say, I have these

1 documents but I don't think you're entitled to them and I'm
2 not going to give them to you. So you have three options:
3 I'll give you all of them -- you have four options: You can
4 say, I'll give you all of them, I'll give you some of them
5 but I'm not going to give you all of them, I don't have any
6 of them, or I object to giving you any of them. Do you
7 follow me?

8 MR. ERLIKH: I follow your Honor.

9 THE COURT: Okay, so that's the four options, and
10 you need to do that one at a time for each of the document
11 requests.

12 MR. ERLIKH: But here, it's --

13 THE COURT: You do that in writing and you send
14 that document back to Mr. Lambert or Mr. Joseph. And to the
15 extent that you are giving him documents, you can either
16 make copies and give them to him or you can say, I'll bring
17 them to your office and you can make copies of them at your
18 office. You have to make them available to copy or you can
19 copy them and give them copies, and then you don't have to
20 go to his office and let him copy them. Do you understand?

21 MR. ERLIKH: Yes, sir.

22 THE COURT: Okay.

23 MR. ERLIKH: Yeah, but here --

24 THE COURT: You need to do that within 21 days.

25 MR. ERLIKH: Okay, your Honor. But here, most of

1 the documents they require, it's from the contract. So if
2 now, contract not exist --

3 THE COURT: Forget the contract now. Forget the
4 contract. Just answer the document requests. You think
5 it's from the contract. It may have some relationship to
6 the contract. I daresay everything has some relationship to
7 that contract. It doesn't matter what it does or doesn't.
8 If you think that you -- just answer the document requests.
9 Don't try to figure out what it relates to at this point,
10 okay?

11 You're entitled -- right now, let me frame it to
12 you this way, Mr. Erlikh: The way this case is developing,
13 it's a broad -- it's kind of a broad inquiry into whether or
14 not the plaintiff gave you and/or Mr. Doubinine money.

15 MR. ERLIKH: Fine.

16 THE COURT: And whether or not you misused or in
17 some way committed fraud with respect to that money.

18 MR. ERLIKH: No, your Honor. We will have proof
19 for that.

20 THE COURT: You're denying it. I'm just saying --

21 MR. ERLIKH: I'm not denying, I'm just proving it,
22 okay?

23 THE COURT: Mr. Erlikh, let me finish.

24 MR. ERLIKH: I'm sorry.

25 THE COURT: I'm trying to explain to you so you --

1 that's what this case is about. It's about money that they
2 say they gave to you and about how they claim you mishandled
3 the money. Now, you can dispute that and you obviously do,
4 but that's what this case is about, okay? It's as simple as
5 that, but it's the whole relationship. Whether it was
6 because of a contract or because there were other things
7 that happened, you know, at this point, you should just sort
8 of not worry about the contract, whether it's involved or
9 not involved. You're not a party to the contract.

10 IRP is a party to the contract, so they cannot
11 claim that you had any obligations. They can't point to the
12 contract and say, Mr. Erlikh, you were supposed to do this.
13 They can only say IRP was supposed to do this.

14 MR. ERLIKH: That's true, your Honor.

15 THE COURT: Do you follow what I'm saying?

16 MR. ERLIKH: I mean, I'm agree with you.

17 THE COURT: Okay.

18 MR. ERLIKH: But this is wrong from that side.

19 THE COURT: But they can also claim, and they will
20 be claiming apparently, that because you controlled IRP --
21 I'm not saying you did.

22 MR. ERLIKH: Okay.

23 THE COURT: -- you arranged it so that IRP gave
24 you the money, and you weren't entitled to that money
25 personally, right?

1 MR. ERLIKH: Okay.

2 THE COURT: And that's separate from the contract,
3 you know, because then it's the relationship between you and
4 IRP. I'm going to have a hard time explaining it.

5 MR. ERLIKH: Your Honor, I really understood.

6 THE COURT: Okay.

7 MR. ERLIKH: I agree with you but --

8 THE COURT: What I'm saying --

9 MR. ERLIKH: -- this is part of our defense.

10 THE COURT: Okay, that's fine.

11 MR. ERLIKH: And this is the truth.

12 THE COURT: You'll get a chance to put on your
13 defense, once there's a trial.

14 MR. ERLIKH: Okay.

15 THE COURT: You'll have a chance to do that.
16 Right now, you need --

17 MR. ERLIKH: We put contract for our defense.

18 THE COURT: They're going to try to arrange with
19 you some defendants. Mr. Lambert is going to find out when
20 Mr. Musabayev is coming to the country. You'll arrange --

21 MR. ERLIKH: We'll do it together.

22 THE COURT: -- to take those depositions at around
23 the same time, so that -- because I think that is a
24 productive way to do it, and who knows? If you're all
25 together in the same place at the same time, you might find

1 some way to resolve this short of having to have a trial.

2 And I urge you to think about that as well. Okay --

3 MR. ERLIKH: Maybe, your Honor.

4 THE COURT: If there's nothing else today, I'm
5 going to schedule another conference with you for early
6 April, after, I hope, the discovery is completed. Does that
7 make sense to you?

8 MR. LAMBERT: Yes.

9 THE COURT: So April 4th, how's that?

10 MR. ERLIKH: I don't know. Because I have no
11 lawyer, it's all my life, and I would like to have a trial
12 maybe fast, because I have to make my living. I just spend
13 every month, you know -- I mean, I really cannot do this,
14 your Honor. Okay, then I have to be here in April.

15 THE COURT: I'm willing, within limits, to make
16 this convenient for you but -- I mean, if you're going to be
17 gone in the first couple weeks of April, we can do it a
18 little later in April. We don't have to do it the first
19 week of April. Were you planning to be away?

20 MR. ERLIKH: Your Honor, honestly, I really don't
21 know. I can be away tomorrow. You know, the last time I
22 was away, my father-in-law died. So instead of be overseas
23 to work, I come back and already two months, I couldn't move
24 because funeral, all these things which was necessary. But
25 we are wasting time because --

1 THE COURT: I don't have any control over that, as
2 you know.

3 MR. ERLIKH: No, of course, nobody can control
4 God, fortunately. I just really feel my understanding
5 because when we receive complaint against us, that means it
6 have to be proved. The plaintiff's side didn't bring one
7 single proof which money was fraud, stolen.

8 THE COURT: This is not the time for the proof.
9 When there's a trial, then everybody puts their proof in.
10 Right now, we're just gathering the proof. So I'm proposing
11 that we get together on April 4th at 11:00 a.m. Is that a
12 good time or would you prefer in the afternoon?

13 MR. LAMBERT: If possible, your Honor, afternoon
14 would be much better because of the traveling arrangements
15 for myself.

16 THE COURT: I see.

17 How about on your side, Mr. Erlikh, Mr. Doubinine?
18 Is the afternoon okay? 3:00, 4:00?

19 MR. ERLIKH: We will try and make favor for
20 plaintiff because for them, it's hard to come. So we can do
21 afternoon, too.

22 THE COURT: Let me ask you this: Is 12:00 noon --
23 that accommodates your --

24 MR. ERLIKH: Whatever convenient for Mr. Lambert.

25 MR. LAMBERT: That early, I could make, probably.

1 THE COURT: Look, I don't know, guys. I'm not
2 trying to be difficult for anybody. Do you prefer having it
3 in the morning? Is that what you're saying?

4 MR. ERLIKH: It's okay, whatever is convenient.
5 For me, it's fine.

6 THE COURT: Then I'm going to make it 3:00 in the
7 afternoon.

8 MR. LAMBERT: All right.

9 THE COURT: I'll talk to you then, thank you.

10 MR. ERLIKH: It's close -- it's easy to the end of
11 the day.

12 MR. LAMBERT: Thank you, your Honor.

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.
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25 ELIZABETH BARRON

February 13, 2012